

11302
RECORDATION NO. Filed 1425

DEC 28 1979 -3 55 PM

INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, D. C.

Gentlemen:

No. 9-362A105

Date DEC 28 1979

Fee \$ 50.00

ICC Washington, D. C.

NEW Number

RECEIVED

DEC 28 3 47 PM '79

I. C. C.
FEE OPERATION BR.

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and nine counterparts each of a Conditional Sale Agreement dated as of December 1, 1979 and an Agreement and Assignment dated as of December 1, 1979 relating thereto.

The general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedules A and B attached to this letter and made a part hereof.

The names and addressed of the parties are:

11302

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INTERSTATE COMMERCE COMMISSION

Owner-Vendors under
Conditional Sale Agreement
and Assignors under Agree-
ment and Assignment:

- (i) Pullman Incorporated
(Pullman-Standard Division),
200 South Michigan Avenue
Chicago, Illinois 60604
and
- (ii) Bethlehem Steel Corporation
Bethlehem, Pennsylvania 18016.

Vendee under Conditional
Sale Agreement:

Burlington Northern Inc.,
176 East Fifth Street
St. Paul, Minnesota 55101
Attn: Vice President and
Treasurer

Assignee under Agreement
and Assignment:

Mercantile-Safe Deposit and
Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

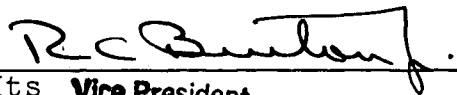
The undersigned is the above-named Vendee and has know-
ledge of the matters set forth in the enclosed documents.

Please return the original and seven copies of the
Conditional Sale Agreement and the Agreement and Assignment to
Larry Elkins, Esq., Chapman and Cutler, 111 West Monroe Street,
Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering
the required recording fee.

Very truly yours,

BURLINGTON NORTHERN INC.

By 
Its **Vice President**
and Treasurer

Enclosures

VENDEE AS AFORESAID

SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER Pullman Incorporated
(Pullman-Standard Division)

DESCRIPTION OF EQUIPMENT 350 Covered Hopper Cars
Marked and Numbered BN
449075 to BN 449424, both
inclusive

SPECIFICATIONS Manufacturer's No. 1036
(as revised September 28, 1979)

BASE PRICE \$42,500

DELIVER TO Burlington Northern Inc.

PLACE OF DELIVERY FOB Manufacturer's Plant

ESTIMATED DELIVERY DATES December, 1979 - January, 1980

OUTSIDE DELIVERY DATE December 1, 1980

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER	Bethlehem Steel Corporation
DESCRIPTION OF EQUIPMENT	300 Open Top, Drop Bottom Ore Cars Marked and Numbered BN 99400 to BN 99699, both inclusive
SPECIFICATIONS	Manufacturer's No. HMA
BASE PRICE	\$43,000
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant, Johnston, Pennsylvania
ESTIMATED DELIVERY DATES	June - July, 1980
OUTSIDE DELIVERY DATE	December 1, 1980

Interstate Commerce Commission
Washington, D.C. 20423

12/28/79

OFFICE OF THE SECRETARY

Larry Elkins, Esq.
Chapman And Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/28/79 at 3:55pm, and assigned re-recording number(s). 11302 & 11302-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

11302

RECORDATION NO. Filed 1425

DEC 28 1979 - 3 55 PM

INTERSTATE COMMERCE COMMISSION.

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1979

Among

PULLMAN INCORPORATED
(PULLMAN-STANDARD DIVISION)
and
BETHLEHEM STEEL CORPORATION

as Manufacturers

and

BURLINGTON NORTHERN INC.

as Vendee

Re:

\$22,200,000 Maximum Principal Amount
11-1/2% Conditional Sale Indebtedness
Due 1980-1994

of

BURLINGTON NORTHERN INC.

(BN No. 79-5)
(350 Pullman Covered Hoppers)
(300 Bethlehem Open Top Ore Cars)

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ATTACHMENTS TO CONDITIONAL SALE AGREEMENT:

Schedules A and B -- Descriptions of Equipment

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of December 1, 1979 among PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION) and BETHLEHEM STEEL CORPORATION, being hereinafter sometimes collectively referred to as the "Manufacturers" and individually as a "Manufacturer", and BURLINGTON NORTHERN INC. (the "Railroad");

WHEREAS, each Manufacturer is willing to construct, sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment to be built by such Manufacturer as described in Schedules A and B attached hereto (collectively the "Equipment" or "Items" and individually "Item of Equipment" or "Item"); and

WHEREAS, except as otherwise provided in Section 3.1 hereof, each Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of such Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will construct, sell and deliver to the Railroad, and the Railroad will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules A and B to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A and B with such modifications thereof as may be agreed upon in writing by the Railroad and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to the new railroad equipment of the character of such Items as of the date of this Agreement.

SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Railroad in accordance with the delivery schedule set forth in Schedules A and B attached

hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions, any Item of Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedules A and B hereto, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer of such excluded item of equipment shall remain obligated to construct, sell and deliver to the Railroad, and the Railroad shall remain obligated to purchase from such Manufacturer, accept delivery of and pay for, any such Item of Equipment thus excluded from this Agreement, and the Railroad and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer and the Railroad shall further execute a separate agreement providing for the sale of such excluded Equipment by such Manufacturer to the Railroad upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad may determine and as may be reasonably satisfactory to such Manufacturer.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Railroad. Upon completion of each Item of Equipment by the Manufacturer thereof, it shall be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment, and, if such Item of Equipment conforms to the Specifications applicable thereto, such inspectors or representatives shall execute and deliver to such Manufacturer a certificate or certificates of acceptance (hereinafter called the Certificate of Acceptance) stating that such Item of Equipment has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 5.1 hereof. Any Certificate of Acceptance may cover any number of Items of Equipment.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto

until delivery to and acceptance by the Railroad. Upon delivery and acceptance by the Railroad of each such Item of Equipment the Railroad shall bear the risk of loss of or damage to such Item.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, including freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is as set forth in Schedules A and B attached hereto. The base price per Item of Equipment shall be subject to increase or decrease (a) as may have been agreed to by the Manufacturer thereof and the Railroad in accordance with agreements, if any, providing for price escalations heretofore entered into, which agreements shall remain in effect for the limited purpose of determining the price of the Equipment between the Railroad and the Manufacturer under this Section 3.1 or (b) as may be agreed to in writing by the Manufacturer thereof and the Railroad, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be divided into not more than four groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Railroad hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds immediately available at such place of payment, the Purchase Price of the Items of Equipment in each Group, as follows:

(a) On the Closing Date for the Group for which settlement is then being made, an amount equal to 20% of the Purchase Price of the Items of Equipment in such Group; and

(b) An amount (the "Conditional Sale Indebtedness") equal to the difference between the entire Purchase Price of the Items of Equipment in such Group and the amount paid pursuant to subparagraph (a) above plus interest on the unpaid balance thereof payable in installments as follows:

(1) For each Item of Equipment in a Group for which settlement is made on a Closing Date occurring prior to June 1, 1980, one installment of interest only at a rate equal to 11-1/2% per annum for the period from and including the Closing Date

for each such Item of Equipment to but not including June 1, 1980, payable on June 1, 1980 followed by an additional installment of interest only accrued and unpaid on such balance on December 1, 1980 at the rate of 11-1/2% per annum;

(2) For each Item of Equipment in a Group for which settlement is made on a Closing Date occurring on or after June 1, 1980, one installment of interest only at a rate equal to 11-1/2% per annum for the period from and including the Closing Date for each such Item of Equipment to but not including December 1, 1980, payable on December 1, 1980;

(3) For each Item of Equipment, on June 1, 1981 and on each December 1 and June 1 thereafter after the last interest payment to and including December 1, 1994, an installment of interest accrued on the unpaid balance of such amount at the rate of 11-1/2% per annum;

(4) For each Item of Equipment, on December 1, 1980 and on each December 1 thereafter to and including December 1, 1993, in addition to the installment of interest then payable, an installment equal to one-fifteenth (6-2/3%) of the original aggregate amount of the Conditional Sale Indebtedness; and

(5) For each Item of Equipment, on December 1, 1994, in addition to the installment of interest then payable, an installment equal to the remaining unpaid balance of the Conditional Sale Indebtedness.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than December 1, 1980 which is not more than ten business days following presentation by the Manufacturer or Manufacturers, as the case may be, of the Items of Equipment included in such Group to the Railroad of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to such Group, as shall be fixed by the Railroad by written or telegraphic notice delivered to such Manufacturer or Manufacturers and any assignee thereof at least five business days prior to the Closing Date designated therein.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Minnesota or Maryland are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for

the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a 360-day year of twelve 30-day months.

3.7. The Railroad will pay interest at the rate of 12-1/2% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.8. All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.9. Except as provided in Section 6 hereof, the Railroad shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Each Manufacturer shall and hereby does retain the full security title to and property in the Equipment built by it until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid in full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of such Manufacturer except that each Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Section 21 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public

offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and will pay to the Railroad any money paid to such Manufacturer, pursuant to Section 6 hereof and not therefore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 5. MARKING OF EQUIPMENT.

5.1. The Railroad will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A and B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of the Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Manufacturer thereof to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Railroad will not change the road number of any Item of Equipment except with the consent of the Manufacturer thereof and any assignee pursuant to Section 14 hereof and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

5.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 6. CASUALTY OCCURRENCES; INSURANCE.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the Purchase Price of such Item, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such Item of Equipment has suffered a Casualty Occurrence, fully inform the Manufacturers in regard thereto. When an Item of Equipment has suffered a Casualty Occurrence, the Railroad shall, within 30 days of such determination, pay the Manufacturers a sum equal to the aggregate Casualty Payment (as defined in Section 6.3 hereof) of such Item of Equipment as of the date of such payment and shall file with the Manufacturers a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Payment of said Item of Equipment; provided, however, that so long as no default or Event of Default shall have occurred and be continuing hereunder, the Railroad may, at its option, postpone the payment of such sum until the aggregate of all Casualty Payments then remaining unpaid shall equal or exceed \$100,000. If the Railroad shall choose to so postpone the Casualty Payment in respect of any Item or Items, all obligations in respect of such Item or Items provided for hereunder, including, without limitation, those provided for in Section 3.3(b) hereof, shall continue to accrue and be payable until the payment of the Casualty Payment in respect thereof and the amount of the Casualty Payment in respect thereof shall be determined as of the date of such payment as provided in Section 6.3 hereof.

6.2. Any money paid to the Manufacturers pursuant to Section 6.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Manufacturers, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of an Item or Items of Equipment of new standard gauge railroad equipment which shall, unless otherwise consented to in writing by the Manufacturers, be of the same character as the Item or Items of Equipment having suffered a Casualty Occurrence to replace such Item or Items of Equipment and which new Item or Items of Equipment shall be of a quality and have a value and utility at least equal to such Item or Items of Equipment having suffered a Casualty Occurrence, as the Railroad shall direct in such written instrument; provided, however, that in no event shall the Railroad have the right to apply such funds toward the cost of any locomotives or cabooses or any passenger or work equipment. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the first installment

date for the payment of the Purchase Price of the Equipment next following receipt by the Manufacturers of such written direction, to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the installments of the Purchase Price of the Equipment thereafter falling due whether or not such amount shall be sufficient to prepay the entire amount of the Purchase Price. In case of replacement the amount to be paid by the Manufacturers in respect of any replacing Item shall not exceed the lesser of the cost of such Item or the amount which such Item would have cost if acquired on the earliest date when any of such money was paid to the Manufacturers, and the Railroad shall pay any additional cost of such Item. Under no circumstance shall the Manufacturers be required under this Section 6.2 to make prepayments or to pay for replacements except out of funds paid to the Manufacturers pursuant to Section 6.1 hereof. In the case of any replacement, the Purchase Price of such replacing Item shall for the purpose of this Agreement be the amount of money advanced by the Manufacturers in payment therefor, but shall not include any portion of the cost thereof paid by the Railroad. The amount which any such replacing Item would have cost if acquired on the earliest date when any of such money was paid to the Manufacturers shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

6.3. The payment to be made to the Manufacturers in respect of each Item of Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.4. So long as no Event of Default shall have occurred and be continuing, any money paid to the Manufacturers pursuant to this Section 6 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) obligations issued or guaranteed by any state of the United States or the District of Columbia or any political subdivision of any such state or district rated "AA" (or the equivalent thereof) or better by Standard & Poor's Corporation or Moody's Investors Service or any successor thereto, or (iii) repurchase agreements fully secured by any one or more of the obligations referred to in clause (i) above, or (iv) in certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks in the United States of America which are members of the Federal Reserve system having capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than one year from the date of such investment (all such investments

being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Manufacturers on any Investments shall be held by the Manufacturers and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Manufacturers thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturers for application pursuant to this Section 6, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Manufacturers an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturers in connection with the purchase and sale of Investments.

6.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 5.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturers subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturers to such replacements. All such replacements shall be warranted in like manner as the Items replaced, and the vendor of the replacements shall, if other than the Manufacturers, duly consent to the subjection thereof to this Agreement and agree to be bound by all the terms and provisions contained herein in respect of such replacements in the like manner as the Manufacturers are in respect of the original Equipment delivered hereunder.

6.6. Whenever the Railroad shall file with the Manufacturers, pursuant to the foregoing provisions of this Section 6, a written direction to apply money to or toward the cost of a replacing Item of new standard gauge railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Item is new standard gauge railroad equipment (other than locomotives or cabooses or work or passenger equipment)

which is of the same character as the Item or Items of Equipment having suffered a Casualty Occurrence (or that the written consent of the Manufacturers to the application of such monies to equipment of another character has been obtained) and has been plated or marked as required by the provisions of this Section 6 and certifying the cost of such replacing Item or Items, the amount which such replacing Item would have cost if acquired on the earliest date when any such money was paid to the Manufacturer and that the cost thereof does not exceed the fair value of such Item and that such replacing Item or Items have a quality and value and utility at least equal to the Item or Items replaced; and

(b) an opinion of counsel for the Railroad that title to each replacing Item is vested in the Manufacturers free and clear of all liens and encumbrances, and that such Item has come under and become subject to this Agreement.

6.7. In the event that any moneys paid to, or held by, the Manufacturers pursuant to this Section 6 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Manufacturers on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Manufacturers pursuant to this Section 6 shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Section 16 hereof.

6.8. In order to facilitate the sale, or other disposition of any Equipment suffering a Casualty Occurrence, the Manufacturers shall upon request of the Railroad, after deposit by the Railroad of a sum equal to the Casualty Payment of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

6.9. In the event that prior to the expiration of the term of this Agreement, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Railroad's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Railroad shall be entitled to receive

and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

6.10. The Railroad will at all times after delivery and acceptance of each Item of Equipment, and at its own expense, keep or cause to be kept each such Item insured both as to property insurance and public liability insurance by a reputable insurance company or companies in amounts and against risks customarily insured against by other railroad companies on similar equipment and in any event in amounts and against risks insured against by the Railroad in respect of similar equipment owned or leased by it and the benefits thereof shall be payable to the Railroad and the Manufacturers as their interests may appear. All proceeds of insurance received by the Manufacturers with respect to any Items of Equipment not suffering a Casualty Occurrence shall be paid to the Railroad upon proof satisfactory to the Manufacturers that any damage thereto with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Manufacturers with respect to a Casualty Occurrence shall be credited toward the payment required to be made by the Railroad with respect thereto pursuant to Section 6 hereof.

SECTION 7. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Manufacturers for collection or other charges and will be free of expense to the Manufacturers in respect of the amount of any local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturers solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturers or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof

does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturers directly and paid by the Manufacturers, the Railroad shall reimburse the Manufacturers on presentation of an invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Manufacturers for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturers shall have submitted notice in writing to the Railroad at least five business days in advance of payment thereof.

SECTION 8. REPORTS AND INSPECTIONS.

8.1. On or before April 1 in each year, commencing with the year 1981, the Railroad will furnish to the Manufacturers an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then subject to this Agreement, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Manufacturers may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.1 hereof shall have been preserved or replaced.

8.2. The Manufacturers shall have the right, at their sole cost and expense by their authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Manufacturers the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 9. POSSESSION, USE AND MAINTENANCE.

9.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Railroad, to the possession of the Equipment and the use thereof upon the railroad lines owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the railroad lines owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may also be used upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Manufacturers to the Railroad; provided however that such use shall be subject to all the terms and conditions of this Agreement and that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States.

9.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Manufacturers which approval shall not be unreasonably withheld, provided that no such approval shall be necessary if and to the extent such modification is required by Section 11 hereof. Any parts (except communications, signal and automatic control equipment and devices having a similar use which are added to any Item of Equipment by the Railroad, the cost of which is not included in the Purchase Price of such Item and which are not required for the operation or use of such Item by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Manufacturers, without cost or expense to the Manufacturers.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturers, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

10.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, or other liens arising in the ordinary course of business and, mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 11. RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in

which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

SECTION 12. INDEMNITIES.

12.1. The Railroad agrees to indemnify, protect and hold harmless the Manufacturers against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Manufacturers of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Manufacturers. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Section 4.2 hereof, or the termination of this Agreement in any manner whatsoever.

12.2. The Railroad, after delivery to and acceptance by the Railroad pursuant to Section 2.5 hereof, will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all of the Equipment.

12.3. Each Manufacturer warrants that the Items of Equipment built by it will be built in accordance with the Specifications therefor. Warranties of material and workmanship with respect to the Items of Equipment built by each of respective Manufacturers are set forth in Schedules A and B, respectively. Each Manufacturer agrees with the Railroad that acceptance of any Items of Equipment under Section 2.4 of this Conditional Sale Agreement shall not be deemed a waiver or modification by the Railroad of any of its rights under the provisions of this Section 12.3 or its warranties expressed in the applicable Schedule hereto.

SECTION 13. PATENT INDEMNITIES.

13.1. Except in cases of designs specified by the Railroad and not developed or purported to be developed by a

Manufacturer, and articles and materials specified by the Railroad and not manufactured by such Manufacturer, such Manufacturer agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless each Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Manufacturer because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design specified by the Railroad and not developed or purported to be developed by such Manufacturer, or any article or material specified by the Railroad and not manufactured by such Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against a Manufacturer, and the use of any Item of Equipment to be built by such Manufacturer is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Railroad the right to continue using such Item of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right and cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by such Manufacturer on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Railroad of any claim known to such Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

13.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

13.3. The obligations and liabilities of the Manufacturer under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

SECTION 14. ASSIGNMENTS.

14.1. Except as otherwise provided in Section 9.1 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers; provided that the Railroad shall have the right to sublease any Item of Equipment to a corporation in which it owns and holds not less than 80% of the issued and outstanding stock having the power to elect members of the board of directors so long as such sublease provides that the interest of the sublessee thereunder shall at all times be and remain junior and subordinate to the rights of the Manufacturers hereunder. In the event of such sublease, the Railroad shall remain fully liable for all of its obligations and undertakings provided for hereunder. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the railroad lines of the Railroad, and which by execution of an appropriate instrument satisfactory to the Manufacturers shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

14.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to construct and deliver the Equipment in accordance with Sections 1 and 2.1 hereof, or to respond to its warranties and indemnities contained in Sections 12.3 and 13 hereof, or relieve the Railroad of its obligations to the Manufacturers hereunder.

14.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturers' right, security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad, of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

14.4. The Railroad hereby acknowledges that, concurrently with the execution and delivery of this Agreement and

in accordance with the custom of railroad equipment manufacturers, the Railroad has made arrangements for and the Manufacturers are executing and delivering an Agreement and Assignment dated as of December 1, 1979 (the "Agreement and Assignment") between the Manufacturer and Mercantile-Safe Deposit and Trust Company, as agent and assignee (the "Agent"), pursuant to which the Manufacturers are assigning certain of their respective rights and interests hereunder. The Railroad expressly acknowledges and agrees with the Agent and its successors and assigns, for the purpose of inducing the execution and delivery of the Agreement and Assignment by the Agent and its advance to the Manufacturers in consideration therefor of an amount equal to the Purchase Price of the Equipment, that the rights of the Agent and its successors and assigns to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or any part thereof as so assigned, together with interest thereon, as well as all other rights hereunder so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any breach of any obligation of any Manufacturer with respect to the Equipment or the delivery or warranty thereof or with respect to any indemnity herein contained or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, at any time owing to the Railroad by any Manufacturer or to any other person, firm or corporation or to any governmental authority, or for any cause whatsoever, it being the intent hereof that, except in the case of a wrongful act on the part of the Agent or its successors and assigns, the Railroad shall be unconditionally and absolutely obligated to pay the Agent the entire unpaid indebtedness in respect of the Purchase Price of the Equipment as so assigned, together with interest thereon, all in the manner and upon the dates set forth in Section 3 hereof. Any and all such obligations, if any and howsoever arising, shall be and remain enforceable according to their merits by the Railroad against and only against the Manufacturers.

14.5. In the event of any such assignment or successive assignment by the Manufacturers of security title to the Equipment and of the Manufacturers' rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the Agent (or to any successor assignee of the Agent) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee of the Agent) will be borne by the subsequent assignee.

14.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with settlement for the Group subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to the Group, all documents reasonably required by the terms of such assignment to be delivered by the Railroad to the assignee in connection with such settlement, in such number or counterparts as may reasonably be requested.

14.7. If this Agreement shall have been assigned by either of the Manufacturers (hereafter severally called the "Assigning Manufacturer") and the assignee shall not, whether by reason of an insufficiency of funds or otherwise, make payment to the Assigning Manufacturer on the Closing Date with respect to any Item of Equipment manufactured by such Assigning Manufacturer and designated for settlement on such Closing Date of an amount equal to that portion of the Purchase Price of such Item of Equipment as provided in the instrument of assignment, such Assigning Manufacturer will promptly notify the Railroad of such event, such Item of Equipment shall be excluded from settlement on such Closing Date by agreement fully preserving such Assigning Manufacturer's security title to such Item in a manner acceptable to the Manufacturer and the Railroad shall not later than 60 days after such Closing Date pay or cause to be paid to such Assigning Manufacturer the Purchase Price of all such Items of Equipment, or the portion thereof unpaid by the assignee, such payment to be in cash, together with interest for the period from and including the Closing Date on which settlement was to have been made to but not including the deferred date of payment of the Purchase Price under this Section 14.7 at a rate per annum equal to the rate of interest charged by The First National Bank of Chicago to its largest and most credit worthy commercial borrowers on 90-day commercial loans or if such Assigning Manufacturer and the Railroad shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad shall determine and as may be reasonably satisfactory to such Assigning Manufacturer.

SECTION 15. APPLICATION OF PROVISIONS OF SECTION 16, "DEFAULTS", AND SECTION 17, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and delivery of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce any remedies in case of default by the Railroad in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Railroad's obligations under this Agreement with each of the Manufacturers.

Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 16 and 17 hereof are set forth as if there were but a single Manufacturer.

SECTION 16. DEFAULTS.

16.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) A petition for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as now constituted or as said Chapter 11 may be hereafter amended, shall be filed by or against the Railroad and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court

order or decree, by trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 12-1/2% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

16.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

17.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or

agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

17.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the railroad lines or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

17.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 16.2 hereof), the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Section 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid indebtedness in respect of the Purchase Price thereof, together with interest thereon and all other payments due hereunder and make such disposition thereof as the Manufacturer shall deem fit. Written notice of the Manufacturer's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 21 hereof, and to any other persons to whom the law may require notice, within 30 days after the indebtedness in respect of the Purchase

Price of the Equipment shall have been declared immediately due and payable by the Manufacturer as above provided. In the event that the Manufacturer should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 17.3 object in writing to the Manufacturer within 30 days from the receipt of notice of the Manufacturer's election to retain the Equipment, then the Manufacturer may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Manufacturer shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 17.

17.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Railroad shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 17), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

17.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy

may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

17.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

17.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

17.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS.

18.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

18.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all

statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 19. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Railroad hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 20. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturers of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturers certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturers.

SECTION 21. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad: Burlington Northern Inc.,
176 East Fifth Street, St. Paul, Minnesota 55101,
Attention: Vice President and Treasurer;

(b) to the Manufacturers: (i) Pullman Incorporated
(Pullman-Standard Division), 200 South Michigan Avenue,
Chicago, Illinois 60604, Attention: _____,
and (ii) Bethlehem Steel Corporation, Bethlehem, Pennsylvania
18016, Attention: _____; and

(c) to the Agent: Mercantile-Safe Deposit and Trust Company, P. O. Box 2258, Baltimore, Maryland 21203, Attention: Corporate Trust Department;

or to any other assignee of the Manufacturers, or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Manufacturers, as the case may be, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 22. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 23. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as provided in Section 3.1 hereof, this Agreement and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturers and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Railroad.

SECTION 24. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 25. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, Pullman Incorporated (Pullman-Standard Division) and Bethlehem Steel Corporation and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards

such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer and the rights and obligations of the Railroad with respect to each Manufacturer hereunder are several and not joint.

SECTION 26. PAYMENT OF EXPENSES.

The Railroad will pay all stamp or other taxes, if any, incident to, and the reasonable cost and expense of, the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement or the Agreement and Assignment, or of any instrument supplemental to or amendatory of this Agreement or the Agreement and Assignment, and of any certificate of the payment in full of the indebtedness in respect of Purchase Price due hereunder.

SECTION 27. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad or any Manufacturer shall be a party, or in case of any sale of all or substantially all of the assets of the Railroad or any Manufacturer, the corporation resulting from such consolidation or merger (if other than the Railroad or such Manufacturer) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder not then performed by the Railroad or such Manufacturer, as the case may be, and shall become entitled to all rights hereunder of the Railroad or such Manufacturer, as the case may be.

SECTION 28. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and

their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

PULLMAN INCORPORATED
(PULLMAN-STANDARD DIVISION)

(Corporate Seal)

By

R. E. Lynch
Vice President

Attest:

W. E. Baker
Assistant Secretary

BETHLEHEM STEEL CORPORATION

By

David Robinson
Vice President

Attest:

D. J. Moore
Assistant Secretary

BURLINGTON NORTHERN INC.

(Corporate Seal)

By

R. C. Butcher
Vice President and Treasurer

Attest:

G. F. Steinhilber
Assistant Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 19th day of December, 1979, before me personally appeared Richard [Signature], to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

(Seal)

My Commission Expires:

MY COMMISSION EXPIRES
August 7, 1983

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF LEHIGH)

On this 21st day of December, 1979, before me personally appeared DAVID ADAMS IV, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn L. Neke
Notary Public

(Seal)

My Commission Expires
City of Bethlehem
Lehigh County
October 13, 1982

My Commission Expires:

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

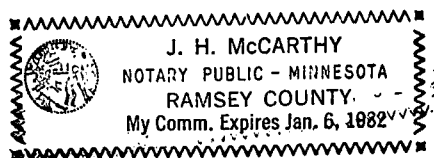
On this 18th day of December, 1979, before me personally appeared R. C. Burton, Jr., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)



Notary Public

My Commission Expires:



SCHEDULE A

(to Conditional Sale Agreement)

MANUFACTURER Pullman Incorporated
(Pullman-Standard Division)

DESCRIPTION OF EQUIPMENT 350 Covered Hopper Cars
Marked and Numbered BN
449075 to BN 449424, both
inclusive

SPECIFICATIONS Manufacturer's No. 1036
(as revised September 28, 1979)

BASE PRICE \$42,500

DELIVER TO Burlington Northern Inc.

PLACE OF DELIVERY FOB Manufacturer's Plant

ESTIMATED DELIVERY DATES December, 1979 - January, 1980

OUTSIDE DELIVERY DATE December 1, 1980

WARRANTY PROVISION

Pullman Incorporated (Pullman-Standard Division) ("Pullman") warrants to the Railroad that the above Items of Equipment will be free from defects in material (except as to items or specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by Pullman) and workmanship under normal use and service. Pullman's obligation under this Warranty Provision is limited to making good at its factory any part or parts of any such Item of Equipment which shall, within one year after delivery of such Item of Equipment, be returned to Pullman with transportation charges prepaid and which Pullman's examination shall disclose to its satisfaction to have been defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to item structure is restricted to one year or 25,000 miles, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with Pullman's written instructions and any applicable Federal, state or local laws or regulations.

Pullman MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The rights of the Railroad under the foregoing warranty shall be their sole and exclusive remedy and Pullman will have no liability for lost profits or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied

on the part of Pullman. Pullman neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

SCHEDULE B

(to Conditional Sale Agreement)

MANUFACTURER	Bethlehem Steel Corporation
DESCRIPTION OF EQUIPMENT	300 Open Top, Drop Bottom Ore Cars Marked and Numbered BN 99400 to BN 99699, both inclusive
SPECIFICATIONS	Manufacturer's No. HMA
BASE PRICE	\$43,000
DELIVER TO	Burlington Northern Inc.
PLACE OF DELIVERY	FOB Manufacturer's Plant, Johnston, Pennsylvania
ESTIMATED DELIVERY DATES	June - July, 1980
OUTSIDE DELIVERY DATE	December 1, 1980
WARRANTY PROVISION	

Bethlehem Steel Corporation (the "Manufacturer") warrants to the Railroad that the above Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Manufacturer, in respect of which the Manufacturer hereby appoints and constitutes the Railroad, its agent and attorney-in-fact to assert and enforce from time to time in the name of the Manufacturer but for the account of the Railroad and in all cases at the sole cost and expense of the Railroad whatever claims and rights the Manufacturer may have against the manufacturer of the specialty) or workmanship under normal use and service, the Manufacturer's obligation under this Warranty Provision being limited to making good at its plant any part or parts of any such Item of Equipment, which shall, within one year after the delivery of such Item of Equipment to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment, or (ii) any such Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN

LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATION HEREUNDER AS LIMITED HEREBY, AND THE MANUFACTURER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID AND EXCEPT FOR PATENT INDEMNITIES CONTAINED IN SECTION 13 HEREOF. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. The Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment to be built by it at any time with the approval of the Railroad.